

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 252 / 2007

Tuesday, this the 24<sup>th</sup> day of February, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

U.Jamal Mohammed,  
Ex-Depot Material Superintendent Grade-III,  
(Mechanical Stores Depot),  
Carriage & Wagon, Southern Railway,  
Perambur,  
Residing at "Unniyakkal House",  
Thirunavaya,  
Malappuram District. ....Applicant


(By Advocate Mr TC Govindaswamy )

v.

1. Union of India represented by  
the General Manager,  
Southern Railway, Headquarters Office,  
Park Town.P.O.  
Chennai-3.
2. The Divisional Controller of Stores (DCOS),  
Mechanical Stores Department,  
Carriage & Wagon, Southern Railway,  
Parambur.
3. The Deputy Controller of Stores,  
Mechanical Carriage & Wagon,  
Southern Railway,  
Parambur.
4. The Chief Materials Manager,  
Mechanical, Southern Railway,  
Headquarters Office,  
Park Town.P.O.  
Chennai-3. ....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil )

This application having been finally heard on 15.1.2009, the Tribunal on  
24.2.2009 delivered the following:



ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The grievances of the applicant in this O.A are against the Annexure A-1 penalty advice dated 21.10.2002 by which he was removed from service, the Annexure A-2 appellate order dated 16.9.2003 by which his Annexure A-7 appeal dated 27.11.2002 has been rejected and the Annexure A-3 revisional order dated 25.8.2006/4.9.2006 by which his Annexure A-8 revision petition dated 17.10.2003 has also been rejected.

2. The applicant was served with the Annexure A-4 memorandum dated 14.9.2001 proposing to hold an enquiry against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for the following imputations of misconduct:

"Shri U Jamal Mohammed, DMS Gr III/MSD/CW/PER has absented himself from duty without adhering to Leave and Medical attendance Rules of the Administration on the dates shown below:

22.06.99 to 20.07.99, 14.09.99 to 31.12.99, 01.01.00 to 31.7.00


04.09.00 to 31.12.00, 01.01.01 to 12.03.01, 16.03.01 to 10.09.01

(Total 720 days)"

After an enquiry was conducted in the matter, the enquiry officer submitted his report to the disciplinary authority vide the Annexure A-5 letter dated 2.9.2002 holding that the applicant "*absented himself on his own accord without adhering to leave Medical Attendance Rules of the Railway Administration.*" and the charges framed against him was proved. In the Annexure A-7 defence submissions made by the applicant, he submitted that he was appointed as Depot Material Superintendent (DMS for short) /III on 31.7.1992 as a direct recruit. During the year 1998, his mother who was suffering from cancer had

become bedridden and no other male member except him was available to look after her. He has also submitted that his father was 85 years of old. Meanwhile he also got affected by Rheumatic Arthritis and was under Ayurvedic treatment for which he had produced medical certificate from time to time and later obtained fitness certificate from the Railway Hospital authorities. He has, therefore, contended that his absence from duty was not deliberate and not intentional and requested the disciplinary authority to consider his case sympathetically for the alleged irregularity on his part.

3. The disciplinary authority considered the enquiry report, the defence submissions made by the applicant and other relevant records and held that the veracity of the Private Medical Certificates (PMC for short) was doubtful as they did not vouch safe on his suffering from any purported diseases. He has observed that for the period from 22.6.1999 to 20.7.1999 neither there was any PMCs nor there was any application for leave submitted for the 3 spells of absence from 16.9.1999 to 20.10.1999 ( 35 days), 20.10.1999 to 19.6.2000 (8 months) and 22.6.2000 to 31.7.2000, the PMCs were given collectively only on 11.8.2000; for the absence for the period from 27.9.2000 to 10.3.2001, he had produced a PMC for only on 13.3.2001 he had already produced another RH/SRR sick certificate covering the period from 3.10.2000 to 9.10.2000 and for his absence from duty from 16.3.2001 for 387 days he produced a PMC only on 7.5.2002 stating that he was suffering from Rheumatic complaint. The genuineness of the certificates were doubtful also for the reason that the Doctor has certified on 16.3.2001 that the employee needs rest exactly for 387 days. Further, another PMC dated 29.9.2001 for 43 days from 29.9.2001 was also available stating that the applicant was suffering from Enteric fever. The disciplinary authority observed that in his order that he was in the habit of absenting himself unauthorizedly at his will, unmindful of the serious



consequences and being a supervisory staff, absenting from duty without adhering to the rules of the Railway Administration shows negligence on his part which amounted to absence of devotion to duty. Accordingly, vide Annexure A-1 penalty advice, he ordered that the applicant should be removed from service forthwith. In the Annexure A-7 appeal, dated 27.11.2002, the applicant contended that the punishment imposed to him was grossly and strikingly disproportionate to the alleged misconduct as staying out of service for a period of 720 days that too with sufficient reasons would not amount to such a conduct that would justify removal from service as its punishment. As the said appeal was rejected, he preferred a revision petition dated 17.10.2003 and the same was also rejected agreeing with the disciplinary authority's order as upheld by the Appellate Authority.

4. The applicant challenged the aforesaid impugned orders passed by the disciplinary authority, appellate authority and the revisional authority on the ground that they were arbitrary, discriminatory and contrary to law and hence violative of the Constitutional guarantees enshrined in Articles 14 and 16. One of his major contention was that the Annexure A-1 penalty advice was issued by an incompetent authority thereby it was in violation of Article 311(1) of the Constitution. According to him, the power to make appointments to the Group 'C' and 'D' posts is vested with the General Manager and the same has not been delegated to any lower authority. He, therefore, contended that his appointing authority for the purpose of Railway Servants (Discipline & Appeal) Rules, 1968 is the General Manager and the same has not been delegated to any lower authority. But the Annexure A-1 order was issued by a lower authority, viz, DCOS/MSD/PER. He further submitted that on behalf of the disciplinary authority, no evidence was advanced to reject the medical certificate given by him from time to time or to show that he had not given these medical certificates



in time. Similarly he had challenged the Annexure A-2 appellate order and the Annexure A-3 revisional order also as non-speaking, without application of mind and not in conformity with Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 respectively. He has also challenged the findings of the inquiry officer as the same was not based on any evidence on record.

5. The respondents have rejected the aforesaid contentions of the applicant. As regards the competency of the disciplinary authority was concerned, they have submitted that at the time of his appointment under the South Central Railway, he was appointed by the District Controller of Stores/Mechanical Stores Depot, Carriage & Wagon, Perambur and he is the competent authority to impose penalty on the applicant as provided in Schedule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. They have also rejected the contention of the applicant that the appellate authority and the revisional authority have rejected his appeal/revision by a non-speaking order without application of mind. They have submitted that the Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 have been fully followed by the appellate as well as the revisional authority. They have further submitted that the findings of the inquiry officer was based on records.

6. In the rejoinder also the applicant has reiterated his avements in the O.A and stated that the contentions of the respondents that he was appointed in the South Central Railway by the District Controller of Stores/Hubli is factually incorrect. According to him the District Controller of Stores was only a communicating officer of the appointment made by the General Manager.

7. The respondents again refuted the aforesaid contention of the applicant and stated that the appointing authority has been defined under Rule 2 of the



Railway Servants (Discipline & Appeal) Rules, 1968 and from the records also it is clear that the applicant was appointed by the District Controller of Stores/Hubli who is an officer in the Senior Scale. They have also produced a copy of the office order No.48/Stores/92 issued by the DCS appointing the applicant as Trainee Depot Store Keeper-III. They have also produced the relevant page of the service book of the applicant where the fact of his appointment was recorded and later absorbed as DSK-III on regular measure on completion of six months training and on qualifying in the final qualifying examination. They have also submitted that in terms of Rule 215(c) of the Indian Railway Establishment Code Vol.I the General Manager may delegate the powers. They have also produced copy of the Railway Board circular dated 25.11.2002 and 2.9.2003 under P.B.No.237/2002 and 144/2003 according to which authorities at various levels who are empowered to make appointments and promotions are as under:

<i>Sl.No.</i>	<i>Grade/Scale of Post</i>	<i>Lowest Appointing Authority empowered to make appointment</i>
1	For all posts carrying scales/grades above Rs.5500-9000 upto Rs.7450-11,500	Head of Department
2	For all posts carrying scale/grade Rs.5500-9000	Junior Administrative Grade Officer
3	For all Group'C' posts carrying scales upto Rs.5000-8000	Senior Scale Officer
4	For all posts in Group'D' service	Jr.Scale/Assistant Officer

As regards, the powers to be exercised under the Railway Servants (Discipline & Appeal) Rules, 1968, as per Schedule II, the powers to impose penalty of removal from service has to be exercised by the appointing authority or an authority of equivalent rank or any higher authority. They have, therefore, reiterated that the applicant was appointed by the District Controller of Stores, General Stores Depot, Hubli who was the competent authority to do so.



8. Respondents have also relied upon the order of the Madras Bench of this Tribunal in O.A.766/2005 and connected cases decided on 5.6.2006. The relevant points of the said order are extracted as under:

"8. The main ground taken on behalf of the applicants by their learned counsel relates to circular No.E(D&A) 2002 RG 6-36 dated 25.11.2002 which deals with the subject of "Imposition of the penalty, dismissal, or compulsory retirement determination of appointing authority etc." It is contended that the disciplinary authority in these five cases would have been the Divisional Railway Manager and not as noted in the impugned penalty orders. The learned counsel urges that the intention of the rules 2(1)(a) of Railway Servants (D&A) Rules, 1968 is that the major penalty of dismissal, removal or compulsory retirement from service on a railway servant should be imposed only by the highest of these authorities (emphasis added) i.e. either by the authority which actually appointed the railway servant to the relevant grade or post or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty, whichever is the higher authority. The penalty of removal, dismissal or compulsory retirement from service should obviously not be imposed by an authority which merely issued the offer of appointment or order of promotion."


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13. The learned counsel states that the applicants' reliance on Annexure A-12 communication may not be of much assistance as far as powers of compulsory retirement, removal from service, dismissal from service have been delegated to appointing authority or an authority of a rank of any higher authority. The learned counsel for the applicants states that the Divisional Officers in the JAG have full powers only in respect of posts controlled by them (emphasis added) and that the appropriate authority is only DRM/ADRM."

9. We heard the learned counsel for both the parties. It is seen that the applicant was working as a Depot Store Keeper. The charge against him was that he was on unauthorized absence for a period of 720 days during the period from 22.6.1999 to 10.9.2001 in different spells. According to the applicant, he had submitted private medical certificates to cover the aforesaid period and also the fitness certificate from the Railway Doctor. The applicant's contention in effect is that once he has submitted private medical certificates covering the period of his absence whenever he liked, the respondent-department was duty



bound to accept them and sanction leave to him. Sub rule 1 of Rule 7 of the CCS( Leave) Rules, 1972 clearly says "*Leave cannot be claimed as of right.*" by a Government servant. Absentism in Government service is a serious misconduct. No department can work efficiently if the employees are not regular in their attendance and perform the duties assigned to them. According to Rule 14 (ibid) "*Any application for leave or for extension of leave shall be made in Form 1 to the authority competent to grant leave.*" Further, Rule 19 (ibid) deals with "*Grant of Leave on medical certificate to Gazetted and non-Gazetted Government servants*". It reads as under:

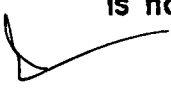
"(1) An application for leave on medical certificate made by -

(i) a Gazetted Government servant, shall be accompanied by a medical certificate in Form 3 given by a Central Government Health Service (CGHS) Doctor if such a Government servant is a CGHS beneficiary or by a Government Hospital or by an Authorised Medical Attendant if he is not a CGHS beneficiary; and by an Authorised of the private hospital recognised under CGHS/Central Services (Medical Attendance) Rules, 1944, in case of hospitalisation or indoor specialised treatment duly approved by Competent Authority in respect of any particular kind of disease like heart disease, cancer, etc. for the treatment of which the concerned hospital has been recognised by the Ministry of Health and Family Welfare:

Provided that the Gazetted Government servant who is a Central Government Health Service beneficiary, if at the time of illness, is away from CGHS area or proceeds on duty outside the Headquarters will produce Medical Certificate (MC) or Fitness Certificate (FC) in Form 3 and Form 5, as the case may be, given by an Authorized Medical Attendant;

(ii) a non-Gazetted Government servant, shall he accompanied by a medical certificate in Form 4 given by a CGHS Doctor if such a Government servant is a CGHS beneficiary or by Government Hospital or by an Authorized Medical Attendant if he is not a CGHS beneficiary; and by an Authorized Doctor of the private hospital, recognized under CGHS/Central Services (Medical Attendance) Rules, 1944, in case of hospitalization or indoor specialized treatment duly approved by the Competent Authority in respect of particular kind of disease like heart disease, cancer, etc., for the treatment of Which the concerned hospital has been recognized by the Ministry of Health and Family Welfare:

Provided that the non-Gazetted Government servant who is a CGHS beneficiary, if at the time of illness is away from CGHS area or proceeds on duty outside the Headquarters will produce M.C. or F.C in Form 4 or 5, as the case may be, given by an Authorized Medical Attendant (AMA) or by Registered Medical Practitioner (RMP) if there is no AMA available within a radius of 8 kilometers (kms) from his





residence or place of temporary stay outside his Headquarters and also in the circumstances When he finds it difficult to obtain MC or FC from a CGHS Doctor or an AMA; defining as clearly as possible the nature and probably duration of illness)

NOTE - In the case of Non-Gazetted Government servant, a certificate given by a registered Ayurvedic, Unani or Homoeopathic medical practitioner or by a registered Dentist in the case of dental ailments or by an honorary Medical Officer may also be accepted, provided such certificate is accepted for the same purpose in respect of its own employees by the Government of the State in which the Central Government servant falls ill or to which he proceeds for treatment.

(2) A Medical officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.

(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.

(4) It shall be the duty of the Government Medical Officer referred to in sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose may either require the applicant to appear before himself or before a Medical Officer nominated by himself.

(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

(6) The authority competent to grant leave may, in its discretion, waive the production of a medical certificate in case of an application for leave for a period not exceeding three days at a time. Such leave shall not, however, be treated as leave on medical certificate and shall be debited against leave other than leave on medical grounds."

10. It is expected of a Government servant to obtain the sanction of the competent authority before he proceeds on leave. It is not even the case of the applicant that he was suffering from any diseases which required immediate hospitalisation. According to him, the disease he was suffering from was only Rheumatism and he was under Ayurvedic treatment as an Out Patient.



11. The inquiry officer has gone into the misconduct alleged against him. According to his report, he has committed misconduct absenting himself from duty without adhering to the leave and medical rules of the Railway Administration. After considering the inquiry report, the submissions made by the applicant, the disciplinary authority has come to the conclusion that the applicant is not a fit person to be retained in service and he has to be removed. Accordingly, Annexure A-1 penalty order was passed. The contentions raised by the applicant are that the penalty imposed upon him is disproportionate compared to the gravity of the offence committed by him and there was no sufficient evidence. We do not agree with those contentions of the applicant as the records show otherwise. It is for the disciplinary authority to decide what punishment is to be imposed to a delinquent official for the misconduct committed by him.

12. It is for the first time that the applicant has raised the objection that the authority which issued the penalty order was not the competent authority to issue the same as it violated the provisions contained in Article 311(1) of the constitution of India. The applicant has never raised any objections in this regard before the Inquiry Officer, Disciplinary Authority or the Appellate Authority. It is like the proverbial saying "When facts are against the litigant, argue the law". The Respondents have duly clarified this issue in their reply statement and we fully agree with their explanation. We are also convinced that the disciplinary authority in this case has the power to remove the applicant from service. In the above facts and circumstances of the case, we do not find any merit in this application and it is dismissed. There shall be no order as to costs.

  
**K NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**